

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36332

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 323
	)	
Plaintiff-Respondent,	)	Filed: January 26, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
BILLY C. CLARE,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Second Judicial District, State of Idaho, Lewis County. Hon. John H. Bradbury, District Judge.

Order denying I.C.R. 35 motion for correction of illegal sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

Billy C. Clare pled guilty to lewd conduct with a minor under sixteen. I.C. § 18-1508. The district court withheld judgment and placed Clare on supervised probation for five years. Thereafter, Clare admitted to violating the terms of his probation, and the district court revoked the withheld judgment, imposed a unified term of ten years, with a minimum period of confinement of two years, and retained jurisdiction. Following retained jurisdiction, the district court suspended Clare's sentence and placed him on probation. Clare again admitted that he violated the terms of his probation, but was again placed on probation. Following another admission that Clare violated his probation, the district court ordered the underlying sentence into execution. Clare filed a motion for correction of an illegal sentence, seeking credit against

his probation for the time served on probation. The district court denied the motion, and Clare appeals.

Pursuant to Rule 35, the district court may correct an illegal sentence at any time. In an appeal from the denial of a motion under Rule 35 to correct an illegal sentence, the question of whether the sentence imposed is illegal is a question of law freely reviewable by the appellate court. *State v. Josephson*, 124 Idaho 286, 287, 858 P.2d 825, 826 (Ct. App. 1993); *State v. Rodriguez*, 119 Idaho 895, 897, 811 P.2d 505, 507 (Ct. App. 1991). Clare concedes that “Idaho courts have expressly ruled that a defendant is not entitled to credit for time served while on probation.” Therefore, having reviewed the record in this case, we conclude that Clare has failed to demonstrate that his sentence is illegal. Thus, the district court did not err in denying his Rule 35 motion. Therefore, the district court’s order denying Clare’s Rule 35 motion is affirmed.